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Attorneys for Defendant  
FACEBOOK, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LINDSEY ABRAMS, individually and on  
behalf of a class of similarly situated  
individuals,,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation,,

Defendant.

Case No. 5:07-cv-05378 JF

**DECLARATION OF MICHAEL G. RHODES  
IN SUPPORT OF DEFENDANT FACEBOOK  
INC.'S EX PARTE APPLICATION (A) TO  
CONTINUE HEARING ON PLAINTIFF'S  
APPLICATION FOR ATTORNEY'S FEES  
AND (B) FOR LEAVE TO CONDUCT  
DISCOVERY THEREFOR.**

I, Michael G. Rhodes, declare as follows:

1. I am a lawyer duly admitted to practice law before all of the state and federal courts within California and am a partner in the law firm of Cooley Godward Kronish LLP. I am lead counsel for defendant Facebook, Inc. ("Facebook") in this action and submit this declaration in support of Facebook's *ex parte* application to continue the July 11, 2008 hearing date on

1 Plaintiff's counsel fee petition and for leave to conduct limited discovery into the matters raised  
2 thereby. I have personal knowledge of the matters stated herein and could, if called as a witness,  
3 testify competently thereto.

4 2. I personally negotiated the settlement reflected in the stipulated judgment signed  
5 by the Court ("Order") on January 23, 2008. The settlement was the product of my outreach to  
6 Plaintiff's counsel when Facebook was sued in this action. The settlement was reached as a result  
7 of face-to-face meetings and telephone calls that I had with opposing counsel over the course of  
8 November and December 2007. Facebook never responded to the complaint.

9 3. The parties were not able to reach agreement as to the amount of attorneys' fees to  
10 which Plaintiff's counsel is entitled (and we agreed that they are entitled to a reasonable award).  
11 Once the Court entered the Order, Facebook then responded to interrogatories and document  
12 requests that plaintiff propounded in order to be able to prepare the fee petition. Pursuant to  
13 paragraph 6 of the Order, Plaintiff has now filed her fee petition, setting a hearing for July 11,  
14 2008.

15 4. On May 20, 2008, my partner Robert Vieth and I held a telephonic meet and  
16 confer session with plaintiff's counsel (Jay Edelson and Myles McGuire). We asked Plaintiff's  
17 counsel whether they would oppose our request to continue the hearing in order to allow  
18 Facebook to conduct limited discovery into the bases of the fee petition. Specifically, given that  
19 we were shocked at the amount of fees (more than \$5 million) sought in a case in which nothing  
20 had occurred beyond the filing of the complaint, settlement discussions and negotiations, and  
21 minimal discovery (consisting of one set of interrogatories and one set of document production  
22 requests and no discovery disputes) for Plaintiff's counsel to prepare their fee petition, we  
23 indicated that we would like to know (among other things) the amount of attorney time and the  
24 applicable billing rates logged by Plaintiff's counsel on the case, and whether we could take the  
25 depositions of the experts whose opinions support the fee petition. Plaintiff's counsel advised us  
26 that the express terms of the Order provide only one way discovery (from Facebook to Plaintiff)  
27 and that we were not entitled to know the amount of time and the rates for Plaintiff's lawyers, nor  
28 could we take the experts' depositions.

1           5.       Accordingly, Facebook is making this *ex parte* application in order to allow it to  
2 receive a full, fair and plenary opportunity to challenge the exorbitant fee request made by  
3 Plaintiff's counsel. Paragraph 6 of the Order requires that the Court hold an evidentiary hearing  
4 (on such terms as established by the Court) on Plaintiff's counsel's fee petition and that Facebook  
5 is entitled to challenge and object to the petition both via written submissions and at the hearing.  
6 To be able to exercise that right to object, reasonable and limited discovery into the bases of the  
7 fee petition is warranted and, to accomplish that, a continuance of the July 11 hearing is  
8 necessary.

9           I declare under the laws of the United States of America that the foregoing is true and  
10 correct.

11  
12 May 28, 2008

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/s/ Michael G. Rhodes  
Michael G. Rhodes